

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BIRL ADAMS,

Plaintiff,

vs.

LIBERTY MUTUAL INSURANCE
CO.,

Defendant.

CV 20-162-M-DLC

ORDER

Before the Court are the parties' respective motions to dismiss. (Docs. 13; 15.) On December 9, 2020, this Court was notified that the above-captioned matter had settled and ordered the parties to "file a stipulation to dismiss together with a proposed order dismissing the case" within 60 days. (Doc. 12 at 1.)

On January 21, 2021, Defendant Liberty Mutual Insurance Company moved this Court for an order dismissing the matter with prejudice. (Doc. 13 at 1.) Defendant represents that despite Plaintiffs execution of a release requiring him to stipulate to the dismissal of this action with prejudice, he has refused to so stipulate on the basis that he may wish to sue for additional sums in the future. (Doc. 14 at 3-4.) Accordingly, Defendant requests that this Court enforce the parties' agreement and dismiss the action with prejudice on its own. (*Id.* at 8.)

The next day, Plaintiff filed his own motion to dismiss, indicating that the matter had been settled out of court and requesting that this Court dismiss the action with each party to bear its own costs and fees. (Doc. 15 at 1.) Notably, Plaintiff's motion does not indicate whether he desires such dismissal to be with or without prejudice. (*Id.*) Additionally, Plaintiff does not indicate whether Defendant opposes this motion and no proposed order has been provided. (*Id.*)

When a party requests that a court dismiss an action but fails to indicate whether they desire such dismissal to be without or without prejudice, that determination is left to the court's discretion. *Hargis v. Foster*, 312 F.3d 404, 412 (9th Cir. 2002) (holding that when a party requests a "dismissal without specifying whether he was requesting dismissal with or without prejudice, [he] implicitly accept[s] either determination by the district court"). The Court elects to dismiss the above-captioned matter with prejudice. Given the representations contained within the Defendant's motion and Plaintiff's own confirmation that the action has been settled, the Court finds the finality attached to a "with prejudice" dismissal appropriate in this case. (Docs. 14 at 3–4; 15 at 1.)

Accordingly, IT IS ORDERED that the parties' respective motions (Docs. 13; 15) are GRANTED.

IT IS FURTHER ORDERED that the above-captioned matter is DISMISSED with prejudice, with each party bearing its own fees and costs.

IT IS FURTHER ORDERED that the deadline for filing a stipulation to dismiss along with a proposed order is VACATED.

The Clerk of Court is directed to close the case file.

DATED this 26th day of January, 2021.



Dana L. Christensen, District Judge
United States District Court